

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/owner:** Paul DiBenedetto  
236 Aubinwood Road, Amherst, MA 01002

**Date application filed with the Town Clerk:** July 13, 2010

**Nature of request:** To alter a non-conforming structure and use by adding an exterior staircase and reducing the number of units from five (5) to four (4), under Section 9.22 of the Zoning Bylaw

**Address:** 665 Main Street (Map 14B, Parcel 207, R-G Zoning District)

**Legal notice:** Published on July 28, 2010 and August 4, 2010 in the Daily Hampshire Gazette and sent to abutters on July 28, 2010

**Board members:** Tom Simpson, Hilda Greenbaum, Eric Beal

**Submissions:**

- Project Application Report, dated August 6, 2010;
- ZBA application, filed with the Town Clerk on July 13, 2010;
- Site Plan – Existing & Proposed (initial proposal);
- Proposed site plan, prepared by Harold Eaton Associates, dated August 4, 2010 (showing eight (8) parking spaces);
- Floor Plans – Proposed;
- Egress Stair Elevation and Plan View;
- Management Plan;
- Lease Agreement;
- Elevations (existing photographs);
- List of improvements;
- Assessor's card, dated January 10, 1963, submitted by staff;
- Town GIS map showing neighborhood density, based on Assessor's records, prepared by staff
- Town GIS aerial photograph, dated 1967, prepared by staff;
- Letter from Health Director, dated August 4, 2010;
- An email from Jim Wald, dated August 6, 2010;
- An updated proposed site plan, dated August 4, 2010 (showing ten (10) parking spaces.

**Site Visit:** August 18, 2010

The Board members and Town Staff met the applicant on site. The Board members observed the following:

- A colonial dwelling located on the corner of the south side of Main Street and east side of Shumway Street;
- An area of grass to the south of the building which is the location of the proposed parking;
- A partially constructed exterior staircase and ~~the~~ an existing tenant storage area along the east side (back) of the building;

- The interior of the four (4) existing units. Two of the one bedroom units were occupied, the two (2) four (4) bedroom units which were under renovation at the time of the visit.

**Public Hearing:** August 12, 2010

Mr. DiBenedetto was accompanied by his wife, Roxane, and contractor, Bill Rock. He stated the following:

- He is seeking approval to add a second means of egress on the building for one (1) unit, reduce the number of units from five (5) to four (4), create a new parking area on the south side of the building and install new pathways to the entrances of the dwelling;
- The grandfathered use of the building is four (4) units as determined by a building permit in 1967 and assessor's card from 1963. At some point, under a different owner, an additional unit was added without the proper permits as the current Assessor's Records indicate that it is a five (5) unit building.
- A survey found that the existing parking area is within the Town Right-of-Way and not on private property.
- Ten (10) parking spaces are proposed on the property, as shown on the submitted site plan;
- The staircase and lighting are the only exterior changes to the building;
- Some walkway lighting may be installed along with a new light on the existing utility pole on Shumway Street to illuminate the parking area;
- As shown on the site plan, the building coverage is 15% where 25% is allowed and the total lot coverage is 39% where 40% is allowed;
- The building is situated 9 feet and 11 feet from the property line whereas 15 feet is required.
- The addition of the exterior staircase constitutes an alteration to a non-conforming structure because the dwelling does not meet the required front yard setback along Shumway Street.

Mr. Simpson acknowledged that the non-conforming use and dimensions of the property are pre-existing and therefore this petition is considered under Section 9.22 of the Zoning Bylaw. For comparison, he cited Section 3.3241, converted dwellings, and explained that if the multi-family use of the property were new, it would need to meet all of the following requirements:

- In the R-G District, the total number of units shall not exceed six (6). The proposed project contains four (4) units;
- There shall be no significant change to the exterior of the building. With the exception of the required stairs, there are no other substantial changes to the exterior of the building;
- The proposed use must be suitably located. The neighborhood along Main Street consists of a mix of multi-family dwellings on a heavily traveled street.
- The dwelling units shall be connected to public sewer. The building is connected to public sewer.
- The Board may modify the dimensional requirements of Table 3, one time for any parcel. In the R-G District, a minimum lot area of 12,000 square feet is required plus 2,500 square feet of additional lot area for each additional dwelling unit. The total lot area required for four (4) units would be 19,500 square feet. The property does not contain the required amount of lot area for four (4) dwelling units, but the requirement could be modified.

The Board determined that based upon the comparison with the existing zoning requirements, the proposed changes comply with Section 9.22 in that they will be less detrimental to the neighborhood.

Mr. Beal confirmed that the use is non-conforming because it does not have a Special Permit. Staff agreed and stated that the review of historical records, specifically Assessor's Records from 1963, were used as a benchmark to establish a pre-existing non-conforming use. A change to a pre-existing non-conforming use triggers the review and approval by the Zoning Board under Section 9.22 of the Zoning Bylaw. In this case, the grandfathered use was four units. At some point, an additional unit was added. The change from five (5) units back to four (4) constitutes a change in use.

The Board discussed the exterior staircase and reviewed the submitted plans. The following was confirmed:

- The stairs, which are currently partially constructed, have been relocated to meet the required side yard setback of 10 feet;
- The stair case will be painted to match the exterior of the house;
- The asphalt shingle roof will be gabled, as shown on the plan, and the pitch being the same as that of the house;
- The location of the staircase triggers a requirement to install one hour fire rated windows.

The Board members expressed concern with the aesthetics of the staircase and discussed several possible measures to mitigate the visual impact, as follows:

- Construction of a wall in front of the staircase with siding similar to the house. The applicant noted that a wall in the yard may look out of place and that he'd prefer planting vegetation.
- The re-alignment of the staircase so that it extends to the rear of the property. Mr. Rock explained that due to the existing grade, positioning the staircase to the rear results in issues problems in constructing the roof covering. He stated that at the end of the staircase, a 3' x 3' covered landing would be required, with additional covered stairs extending further into the back yard due to grade changes. The result would be a longer set of covered stairs, creating a tunnel effect.

Mr. Simpson asked if the new walkway in the front will match the existing walkway. Mr. DiBenedetto stated that at this time the walkway will not match the existing walkway, which consists of pavers.

Mr. Simpson asked what exterior lighting on the house and the parking area is proposed. Mr. DiBenedetto stated that the exterior lighting will be downcast rectangular fluorescents mounted on the dwelling as shown on the submitted detail sheet. The walkway behind the house will be lit by low level ground lighting. The parking area will be illuminated by a new utility owned street light on the west side of Shumway Street. Ms. Greenbaum expressed concern about the brightness and glare of the light pollution on adjacent properties and stated that it would be preferable to have a lamp post light for the parking area and walkways rather than the street light. Mr. DiBenedetto explained that the size of the parking area is large, and that a pole light would have to be tall in order to cover the entire parking area. He added that the street light would provide better coverage of the parking lot.

The Board determined that a condition could require the applicant come back before the Board if anyone complains about the street light.

Ms. Greenbaum stated that the applicant should make an effort to acknowledge that the house is historic and is located in a historic district. She requested that the applicant consider utilizing lighting fixtures that are more in line with the historic architecture of the house, at least on the front and west facades.

Mr. Simpson asked about whether there would be any provision for tenant storage and bicycle storage. He stated that Section 7.8 of the Zoning Bylaw requires a bike rack for projects with ten (10) or more parking spaces. Mr. DiBenedetto noted that he is only required to provide eight (8) spaces pursuant to the Zoning Bylaw. Mr. Simpson stated that provisions for bicycle storage are part of the Town's trend toward encouraging bicycling as an alternative to driving. Mr. DiBenedetto stated that the tenants can store bicycles in the basement.

Ms. Greenbaum questioned the removal of the stairway in a historic house. Mr. DiBenetto stated that he would have liked to have kept the interior staircase, but it was an issue of safety and its demolition was ordered by the Health Department. Mr. Rock stated that the original staircase had been modified over the years and that it was so steep that there was not a way to make it conform to the current building code requirements.

The Board noted that the applicant is requesting a waiver from the screening requirements of Section 7.112 of the Zoning Bylaw. The Board determined that the screening from the adjacent property to the south could be waived because the elevation of the parking area would be significantly lower than the dwelling and that vehicle headlights will not shine into windows. Additionally, it was noted that the parking behind the building is less unsightly than the previous parking in the Shumway Street right-of-way.

The Board determined that a landscaping plan and lighting plan should be submitted at a public meeting. The landscaping plan should show some mitigation of the visual impact of the exterior staircase from Main Street. The lighting plan should include the location of all fixtures and alternative fixtures for the entrances on Main Street and Shumway Street. The Board stated that both plans could be prepared by the applicant.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Mr. Beal seconded the motion and the Board VOTED unanimously to close the public hearing.

### **Public Meeting:**

#### **Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381- The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority and is compatible with existing uses and other permitted uses in the same zoning district. The property has been used for multiple dwelling units since at least 1963 and there are other multifamily dwellings in the neighborhood and within the same Zoning District.

10.382 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The only change to the exterior of the building is the staircase. A landscape plan will be submitted with the intent, at least in part, to mitigate the visual impact of the staircase. New lighting fixtures will be downcast and shielded.

10.383- The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The proposal will ameliorate several health and safety violations by the construction of the exterior staircase. The parking will be relocated from the street right of way to the south side of the property and will reduce the likelihood of traffic hazards for vehicles and pedestrians by eliminating the need to back onto Shumway Street.

10.384 -Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The proposal includes the construction of a trash enclosure to store rubbish and recyclables of the tenants. The number of units has been reduced in order to remove the interior egress and provide a covered exterior egress in accordance with the Building Code requirements. The proposal includes the creation of ten (10) parking spaces on the subject property, which amounts to one space per bedroom. The proposal includes the creation of walkways from the parking area to doorways and a walkway from the fire escape to the road. Bicycles storage will be provided for the tenants.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The proposal provides ten (10) parking spaces on the subject property. This exceeds the requirements for 2 parking spaces per unit under Section 7.000 of the Zoning Bylaw. The proposal removes a total of 10 parking spaces from the street right-of-way, eight of which were in violation of Section 7.000 which allows only two spaces in the front yard setback. There are no signs proposed as part of this application.

10.387 - The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The existing parking consists of ten (10) vehicles parking head first and backing out onto Shumway Street. The proposal provides ten (10) parking spaces on the subject property, includes a turn-around area to prevent the backing onto Shumway Street and includes new walkways for tenants.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The proposal includes the construction of a 4' x 10' trash enclosure on the side of the building for the storage of rubbish and recyclables of the tenants. The property is connected to public water and sewer.

10.391 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features. Other than the staircase, there are no other changes to the exterior of the building. The permit is conditioned to require the submission of a landscape plan and lighting plan. The landscape plan is intended, at least in part, to mitigate the aesthetic impact of the staircase. The lighting plan requires the submission of lighting fixture details that are more ~~historically~~ historically-compatible, historically, with the existing building.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. The permit requires the submission of a landscape plan which is intended, at least in part, to mitigate the aesthetic impact of the staircase. A waiver from the screening requirements associated with the parking area has been waived.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. The exterior lighting associated with the dwelling will be downcast. The lighting associated with the parking area will require modification if complaints are filed.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw and the goals of the Master Plan. The proposal brings the parking associated with this use into conformance with the requirements of Section 7.000 of the Zoning Bylaw. The proposal ensures and enhances the safety of tenants of this building by constructing the second floor stairs, in addition to other interior improvements. The proposal is in harmony with the goal of the master plan to “preserve and expand the number of affordable and moderately priced rental and ownership units in the housing stock”.

The Board found under Section 9.22 of the Zoning Bylaw, that the proposal [reduction from five (5) units to four (4) units, egress stairs, and on-site parking] are all improvements and will not be substantially more detrimental than the existing/previous conditions.

The Board determined that the location and elevation of the parking area is lower than the first floor of the adjacent dwelling to the south and the vehicle headlights would not shine onto any window. The Board also found that relocation of the parking on the property is an improvement from the existing conditions with up to ten (10) vehicles being parking in the street right-of-way and visible from Main Street. The relocated parking area also increases safety of tenants and passersby because it eliminates the need to back into Shumway Street.

Mr. Simpson MOVED to waive the screening requirements of Section 7.112. Ms. Greenbaum seconded the motion and Board voted unanimously.

#### **Public Meeting – Zoning Board Decision**

Mr. Simpson moved to APPROVE the application with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00002, to allow for the alteration of a non-conforming building and use to formalize the use of the building as a four (4) unit dwelling, with an exterior staircase and on-site parking, as applied for by Paul DiBenedetto, under Section 9.22 of the Zoning Bylaw, at 665 Main Street (Map 14B, Parcel 207, R-G Zoning District) with conditions.

\_\_\_\_\_  
TOM SIMPSON

\_\_\_\_\_  
HILDA GREENBAUM

\_\_\_\_\_  
ERIC BEAL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00002, to allow for the alteration of a non-conforming building and use to formalize the use of the building as a four (4) unit dwelling, with an exterior staircase and on-site parking, as applied for by Paul DiBenedetto, under Section 9.22 of the Zoning Bylaw, at 665 Main Street (Map 14B, Parcel 207, R-G Zoning District) with the following conditions:

1. A landscape plan showing proposed plant location and type shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting. The landscape plan is intended, at least in part, to provide mitigation from the aesthetic impact of the stairway from Main Street.
2. A lighting plan showing the location of lighting on the building and any other exterior lights, including walkway lights and fixture details shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting. The lighting fixtures over the entrances facing Main Street and Shumway Street shall be of a design and style that is compatible with the historic architecture of the building.
3. The use of the dwelling shall consist of four (4) units, with all rooms used as labeled in accordance with the floor plans stamped approved on August 12, 2010.
4. The exterior staircase shall be constructed according to the plans stamped approved on August 12, 2010. The stairs shall be painted or stained to match the exterior of the existing dwelling and the roofing materials shall be similar to those of the existing roof;
5. Ten (10) parking spaces shall be provided on the property in accordance the site plan, prepared by Harold Eaton Associates, dated August 4, 2010 and stamped approved on August 12, 2010.
6. The trash and recycling receptacles shall be rodent and vermin resistant and shall be stored in the enclosure, as shown on the site plan approved on August 12, 2010.
7. An area shall be provided for tenants' ~~for~~ bicycle storage in the basement.
8. The existing storage area at the back of the building shall be maintained and available for use by the tenants.
9. The parking lot shall be illuminated by a light affixed to the existing utility pole located on the west side of Shumway Street. In the event that the light is not able to be installed, or if there are complaints about the brightness of the lighting fixture, the owner shall submit a revised/alternative lighting plan for the parking area to be reviewed and approved at a public meeting.
10. Each dwelling unit shall be registered with the Board of Health in accordance with the Rental Registration requirements.
11. The name and telephone number of the property owner shall be recorded with the Health Department, Inspection Services and Fire Department.

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Tom Simpson, Chair  
Amherst Zoning Board of Appeals

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DATE